ROC FORMS FUNDAMENTALS

FORM 20B , 66 , 32 , 23 ACA , 23 AC , 23B

Analysis of forms governed by respective sections and particulars of forms etc.

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FORM 20B

SECTION 159 & 161

159. ANNUAL RETURN TO BE MADE BY COMPANY HAVING A SHARE CAPITAL

1) *Every company having a share capital* shall, within *sixty days* from the day on which each of the *annual general meetings* referred to in section 166 is held, prepare and file with the Registrar a return containing the particulars specified in *Part I of Schedule V*, as they stood on that day, regarding –
   a. its registered office,
   b. the register of its members,
   c. the register of its debenture holders,
   d. its shares and debentures,
   e. its indebtedness,
   f. its members and debenture holders, past and present, and
   g. its directors, managing directors [1][***], managers and secretaries, past and present :

   Provided that if any of the [2][five] immediately preceding returns has given as at the date of the annual general meeting with reference to which it was submitted, the full particulars required as to past and present members and the shares held and transferred by them, the return in question may contain only such of the articulars as relate to persons ceasing to be or becoming members since that date and to shares transferred since that date or to changes as compared with that date in the number of shares held by a member.

   Explanation. - Any reference in this section or in section 160 or 161 or in any other section or in Schedule V to the day on which an annual general meeting is held or to the date of the annual general meeting shall, where the annual general meeting for any year *has not been held,* be construed as a reference to *the latest day* on or before which that meeting *should have been held* in accordance with the provisions of this Act.

2) The said return shall be in the form set out in Part II of Schedule V or as near thereto as circumstances admit and where the return is filed even though the annual general meeting has not been held on or before the latest day by which it should have been held in accordance with the provisions of this Act, the company shall file with the return a statement *specifying the reasons for not holding the annual general meeting* :

   Provided that where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the list referred to in paragraph 5 of Part I of Schedule V shall state the amount of stock held by each of the members concerned instead of the shares so converted previously held by him.

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1. Words ", managing agent, secretaries and treasurers" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
2. Substituted for "two" by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

Every company having a share capital shall, within *sixty days* from the day on which each of the *annual general meetings* .

FORM 20B

SECTION 159 & 161

161. FURTHER PROVISIONS REGARDING ANNUAL RETURN AND CERTIFICATE TO BE ANNEXED THERETO

1) The copy of the annual return filed with the Registrar under section 159 or 160, as the case may be, shall be signed both by
   a. Company having manager or secretary
      - a director and
      - by the [1][***] manager or secretary of the company,
   b. Company not having manager or secretary
      - two directors of the company, one of whom shall be the managing director where there is one :

   [2][***Provided*** that where the annual return is filed by a company whose shares are listed on a recognized stock exchange, the copy of such annual return shall also be signed by a secretary in whole-time practice.]

2) There shall also be filed with the Registrar along with the return a certificate signed by [3][***] the signatories of the return, stating –
   a. that the return states the facts as they stood on the day of the annual general meeting aforesaid, correctly and completely ;
   aa. that since the date of the last annual return the transfer of all shares and debentures and the issue of all further certificates of shares and debentures have been appropriately recorded in the books maintained for the purpose ; and
   b. in the case of a private company also,
      i. that the company has not, since the date of the annual general meeting with reference to which the last return was submitted, or in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company, and
      ii. that, where the annual return discloses the fact that the number of members of the company exceeds fifty, the excess consists wholly of persons who under sub-clause (*b*) of clause (*iii*) of sub-section (1) of section 3 are not to be included in reckoning the number of fifty.

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1. The words "managing agent, secretaries and treasures," omitted by the Companies (Amendment) Act, 1988
w.e.f. 15-6-1988.
2. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.
3. The word "both" omitted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

Every company having a share capital shall, within *sixty days* from the day on which each of the *annual general meetings* .

FORM 66

SECTION 383A RULE 3(2)

383A. CERTAIN COMPANIES TO HAVE SECRETARIES

1) Every company [1][having such paid-up share capital as may be prescribed] shall have a whole time secretary, and where the Board of directors of any such company comprises only two directors, neither of them shall be the secretary of the company.

   [2][***Provided*** that *every company* not required to employ a whole time secretary under sub-section (1) and having a *paid-up share capital of ten lakhs rupees or more* shall file with the Registrar a certificate from a *secretary in wholetime practice* in such form and within such time and subject to such conditions as may be prescribed, as to whether the company has complied with all provisions of this Act and a copy of such certificate shall be attached with Board's report referred to in section 217.]

   a. [3][(1A) If a company fails to comply with the provisions of sub-section (1), the company and every officer of the company who is in default, shall be punishable with fine which may extend to [4][five hundred] rupees for every day during which the default continues :

      Provided that in any proceedings against a person in respect of an offence under this sub-section, it shall be a defence to prove that all reasonable efforts to comply with the provisions of sub-section (1) were taken or that the financial position of the company was such that it was beyond its capacity to engage a whole time secretary.]

2) Within *thirty days* from the day on which each of the *annual general meetings* referred to in section 166 is held

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1. Substituted for "having a paid-up share capital of rupees twenty-five lakhs or more" by the Companies (Amendment) Act, 1988 w.e.f. 1-12-1988.
2. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
3. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 1-12-1988.
4. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

Company having a paid-up share capital of ten lakhs rupees or more shall file with the Registrar a certificate from a secretary in whole time practice in such form(66).

FORM 23AC, 23ACA

SECTION 220

220. THREE COPIES OF BALANCE SHEET, ETC., TO BE FILED WITH REGISTRAR

1) After the *balance sheet and the profit and loss* account have been laid before a *company at an annual general meeting* as aforesaid, there shall be filed *with the Registrar within thirty days* from the date on which the balance sheet and the profit and loss account were so laid, or where the annual general meeting of a company for any year has not been held, there shall be filed with the registrar within thirty days from the latest day on or before which that meeting should have been held in accordance with the provisions of this Act, -

   a. 1a[a copy] of the balance sheet and the profit and loss account, signed by the *managing director*, 1a[***] *manager or secretary of the company*, or if there be none of these, by a director of the company, together with 1a[a copy] of all documents which are required by this Act to be annexed or attached to such balance sheet or profit and loss account :

   Provided that in the case of a private company, [copy] of the balance sheet and [copy] of the profit and loss account shall be filed with the Registrar separately :

   b. [*Omitted by the Companies* (*Amendment*) *Act, 1960.*]

Provided further that, -

(i) in the case of a private company which is not a subsidiary of a public company, or

(ii) in the case of a private company of which the entire paid-up share capital is held by one or more bodies corporate incorporated outside India, or

(iii) in the case of a company which becomes a public company by virtue of section 43A, if the Central Government directs that it is not in the public interest that any person other than a member of the company shall be entitled to inspect, or obtain copies of, the profit and loss account of the company, no person other than a member of the company concerned shall be entitled to inspect, or obtain copies of, the profit and loss account of that company under section 610.

After the balance sheet and the profit and loss account have been laid before a company at an annual general meeting as aforesaid, there shall be filed with the Registrar within thirty days from the date on which the balance sheet and the profit and loss account were so laid.

FORM 23AC, 23ACA

SECTION 220

2) If the annual general meeting of a company before which a balance sheet is laid as aforesaid does not adopt the balance sheet, 2a[or is adjourned without adopting the balance sheet], or, if the annual general meeting of a company for any year has not been held, a statement of that fact and of the reasons therefor shall be annexed to the balance sheet 2a[***] required to be filed with the Registrar.

3) If default is made in complying with the requirements of sub-sections (1) and (2), the company, and every officer of the company who is in default, shall be liable to the like punishment as is provided by section 162 for a default in complying with the provisions of section 159, 160 or 161.

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1. Words "managing agent, secretaries and treasurers," omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
2. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

After the balance sheet and the profit and loss account have been laid before a company at an annual general meeting as aforesaid, there shall be filed with the Registrar within thirty days from the date on which the balance sheet and the profit and loss account were so laid.

FORM 32

SECTION 303(2), 264(2) OR 266(1)(a) AND66(1)(b)(iii)

303. REGISTER OF DIRECTORS 1[***], ETC

2) *The company shall*, within the periods respectively mentioned in this sub-section, send to the Registrar a return 3[***] in the prescribed form containing the particulars specified in the said register and a notification 3[***] in the prescribed form of any change among its directors, managing directors 1[***], managers or secretaries, specifying the date of the change.

The period within which the said return is to be sent shall be a *period of thirty days from the appointment of the first directors of the company* and the period within which the said notification of a change is to be sent shall be thirty days from the happening thereof.

264. CONSENT OF CANDIDATE FOR DIRECTORSHIP TO BE FILED WITH THE COMPANY AND CONSENT TO ACT AS DIRECTOR TO BE FILED WITH THE REGISTRAR.

2) *A person* other than -
   a. a director re-appointed after retirement by rotation or immediately on the expiry of his term of office, or
   b. an additional or alternate director, or a person filling casual vacancy in the office of a director under section 262,appointed as a director or re-appointed as an additional or alternate director, immediately on the expiry of his term of office, or
   c. a person named as a director of the company under its articles as first registered,

shall not act as a director of the company unless *he has within thirty days of his appointment sign and filed with the Registrar* his consent in writing to act as such director.

266. RESTRICTIONS ON APPOINTMENT OR ADVERTISEMENT OF DIRECTOR

1) *A person* shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in a prospectus issued by or on behalf of the company, or as proposed director of an intended company in a prospectus issued in relation to that intended company, or in a statement *in lieu* of prospectus filed with the Registrar by or on behalf of a company, unless, before the registration of the articles, the publication of the prospectus, or the filing of the statement *in lieu* of prospectus, as the case may be, he has, by himself or by his agent authorized in writing, -
   a. *signed and filed with the Registrar a consent in writing to act as such director*.

Form of any change among its directors, managing directors managers or secretaries, specifying the date of the change, within thirty days from the appointment to the Registrar in the prescribed form containing the particulars

FORM 32

SECTION 303(2), 264(2) OR 266(1)(a) AND66(1)(b)(iii)

b. either –
   i. signed the memorandum for shares not being less in number or value than that of his qualification shares, if any ; or
   ii. taken his qualification shares, if any, from the company and paid or agreed to pay for them ; or
   iii. signed and filed with the Registrar an undertaking in writing to take from the company his qualification shares, if any, and pay for them ; or
   iv. made and filed with the Registrar an affidavit to the effect that shares, not being less in number or value than that
   of his qualification shares, if any, *are registered in his name*.

Form of any change among its directors, managing directors managers or secretaries, specifying the date of the change, within thirty days from the appointment to the Registrar in the prescribed form containing the particulars

FORM 23B

SECTION 224(1A)

224. APPOINTMENT AND REMUNERATION OF AUDITORS

1) *Every company shall*, *at each annual general meeting*, *appoint an auditor or auditors* to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting and shall, within seven days of the appointment, *give intimation* thereof *to every auditor* so appointed :

   Provided that before any appointment or re-appointment of auditor or auditors is made by any company at any annual general meeting, *a written certificate shall be obtained by the company from the auditor* or auditors proposed to be so appointed to the effect that the appointment or re-appointment, if made, will be in accordance with the limits specified in sub-section (1B).

   A. Every auditor appointed under sub-section (1) shall *within thirty days of the receipt from the company of the intimation* of his appointment, inform the Registrar in writing that he has *accepted, or refused to accept, the appointment*.

Every auditor appointed shall within thirty days of the receipt from the company of the intimation of his appointment, inform the Registrar in writing that he has accepted, or refused to accept, the appointment